SUPREME COURT OF THE STATE OF CALIFORNIA

DAVID, Petitioner, vs. APPELLATE DIVISION OF THE SAN FRANCISCO SUPERIOR COURT and COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, Respondents.	Case No. S208927 First Appellate District, Division One No. A137730 San Francisco County Crim. Superior Court No. CZA0308327
THE PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest.	

CITY AND COUNTY OF SAN FRANCISCO'S PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Honorable Ronald W. Stovitz
San Francisco County Superior Court

DENNIS J. HERRERA, State Bar #139669
City Attorney
WAYNE SNODGRASS, State Bar #148137
VINCE CHHABRIA, State Bar #208557
Deputy City Attorneys
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Telephone: (415) 554-4674
Facsimile: (415) 554-4699
E-Mail: vince.chhabria@sfgov.org

Attorneys for Real Party in Interest
CITY AND COUNTY OF SAN FRANCISCO

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

This Court should deny the petition for a writ of certiorari for the following reasons:

1. Petitioner challenged his conviction for a red-light camera infraction in the Appellate Division of the San Francisco Superior Court. The Appellate Division rejected his challenge, and the First District Court of Appeal declined his request to transfer the case. Petitioner has thus received all the appellate review available for an infraction – mandatory appellate review by the Appellate Division and discretionary review by the Court of Appeal. The decision by the Court of Appeal not to take the case from the Appellate Division is not reviewable by this Court on a petition for review. Cal. Rule of Court 8.500(a)(1). The Court of Appeal has "uncontrolled discretion" over the decision whether to review a ruling of the Appellate Division. *Snukal v. Flightways Mfg., Inc.*, 23 Cal.4th 754, 773-74 (2000).

2. Recognizing he cannot file a "petition for review" to challenge the Court of Appeal's decision not to hear his case, Petitioner instead files what he calls a "petition for a writ of certiorari." But he asks for exactly the same thing – an order requiring the Court of Appeal to hear his case. See Pet. at 5. Petitioner cannot avoid the consequences of Rule 8.500(a)(1) simply by changing the name of his filing.

3. In any event, the purpose of a "writ of certiorari" is to review a judicial act to determine if it was in excess of jurisdiction. Cal. Code Civ. Proc. § 1068. *See also* Cal. Prac. Guide Civ. App. & Writs Ch. 15-B. There is no jurisdictional issue here, because the Appellate Division indisputably has jurisdiction over appeals from infraction convictions. Cal.

Rule of Court 8.925. Petitioner merely argues that the Appellate Division was wrong to affirm his conviction. And he believes his arguments did not receive the consideration they deserved. But even if the Appellate Division decided Petitioner's appeal incorrectly (which it did not) that is not jurisdictional error, and thus not the proper subject of a writ of certiorari.

4. Petitioner complains the Appellate Division did not serve The People with his notice of appeal or with the appellate briefing schedule, as contemplated by Title Eight, Division Two of the California Rules of Court. Pet. at 15-16. But this did not operate to Petitioner's detriment – it did not interfere with his ability to make his own case on appeal. Nor, incidentally, did it deprive The People of the opportunity to make any case they would have wished to make. It is undisputed that The People were aware of the appeal and declined to file a brief on their own accord, as is their option under the rules governing infractions. *See* Cal. Rule of Court 8.927.

5. Although it hardly matters given the procedural impropriety of this petition for a writ of certiorari, the Appellate Division was correct to uphold the conviction. Petitioner contended that San Francisco failed to comply with the then-applicable version of Vehicle Code Section 21455.5(a)(1), which provided that red-light camera jurisdictions must either post signs at each red-light camera intersection, or at "all major entrances to the city." As Petitioner himself admits, San Francisco posts more than 60 signs at numerous entrances to the City, Pet. Ex. 13 at 99 & n.1, which is far more than the minimum amount of signage contemplated by the Vehicle Code. Petitioner's construction of the prior version of Section 21455.5(a)(1) as requiring San Francisco to put a sign on the

Golden Gate Bridge, rather than at all intersections flowing from the Bridge, is absurd.

6. Nor does this case present a question of statewide importance (or even citywide importance) that is likely to recur. Petitioner's assertion that there is no case law discussing this issue only underscores its lack of importance. Furthermore, as Petitioner notes, the Legislature has amended Section 21455.5(a)(1) so that, beginning in 2014, red-light camera jurisdictions will no longer be required to post signs at major entrances. Instead, they will be required to post signs within 200 feet of each intersection that has a camera. Pet. at 1 & n.1. San Francisco is in the process of complying with this new requirement, which obviates the issue Petitioner claims is so important.

7. Finally, Petitioner's challenge to the way San Francisco posts signs is unrelated to the red-light camera cases presently before the Court. In *People v. Gray*, Case No. S202483, the Court is considering whether red-light camera jurisdictions must provide a 30-day warning period after the installation of each new red-light camera, or only after the initial installation of the red-light camera program. In *People v. Goldsmith*, Case No. S201443, the Court is considering whether a red-light camera conviction is appropriate in the absence of testimony about the reliability of the photographic evidence from the contractor that installed the red-light camera system. Petitioner argues only that his conviction is invalid because San Francisco does not post signs directly on bridges, which, in addition to being wrong, implicates a provision of the Vehicle Code not presently being considered by the Court.

///

///

For all these reasons, the Court should deny the petition for a writ of certiorari.

Dated: March 21, 2013

DENNIS J. HERRERA
City Attorney
WAYNE SNODGRASS
VINCE CHHABRIA
Deputy City Attorneys

By: Vince Chhabria/WS
VINCE CHHABRIA

Attorney for Real Party in Interest
CITY AND COUNTY OF SAN FRANCISCO